



August 14, 2018

***Submitted by UPS Mail & On-Line Portal***

Larry Gottesman  
National Freedom of Information Officer  
2822T  
1200 Pennsylvania Ave, NW  
Washington, DC 20460  
<https://www.foiaonline.gov/foiaonline/action/public/request>

Re: Freedom of Information Act Request

Dear Mr. Gottesman,

The Yale Environmental Justice Law Clinic (the “EJL Clinic”), NAACP Legal Defense & Educational Fund, Inc. (“LDF”), and the Ashurst Bar/Smith Community Organization (“ABSCO”), submit this Freedom of Information Act (“FOIA”). As discussed below, we seek expedited processing of this request.

Pursuant to FOIA, 5 U.S.C. § 552, we respectfully request the following:

- 1) All documents disseminated in the Environmental Protection Agency’s (“EPA”) possession containing information regarding how EPA defines and evaluates the element of causation in its investigation of claims pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) and its implementing regulations, 40 C.F.R. Part 7, from January 1, 2012 to the present (“Title VI”).

For the purpose of this request, the term “document” includes, but is not limited to, information of any kind and stored in any manner in the possession of the EPA. This includes writings, letters, memoranda, correspondence, notes, applications, completed forms, studies, reports, reviews, guidance documents, policies, telephone conversations, telefaxes, e-mails, documents, databases, drawings, graphs, charts, photographs, presentations, minutes of meetings, electronic and magnetic records of meetings, and any other compilation of data from which information can be obtained. Without limitation, the records requested include records at any stage of development, whether proposed, draft, pending, interim, final, or otherwise.

We request that all documents be provided in native file format with metadata. See 5 U.S.C. § 552(a)(3)(B) (“the agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”).

To the extent that this request encompasses any documents that contain confidential information, we request that EPA redact portions of the requested documents that are deemed confidential, and disclose redacted documents to the fullest extent possible as well as the basis for any such redactions.



To facilitate EPA's prompt response to this FOIA Request, we propose the following search terms, as well as any acronym, nickname, or other variation of these terms (including searching separately for both the first and last names for proper names):

- Causation
- Causal connection
- Adverse disparate impact
- Disparate Impact
- Adverse impact
- Adversity
- Prima Facie Case of Adverse Disparate Impact
- Evidence
- Scientific Proof
- Direct Link
- Potentially significant exposures
- Proving Discrimination
- Title VI
- Lilian Dorka
- Velveeta Golightly-Howell

ABSCO is a community organization based in the Ashurst Bar/Smith community in Tallassee, Alabama. ABSCO is predominantly comprised of African American residents who live or own land in close proximity to the Stone's Throw Landfill. ABSCO strives for positive change and a better quality of life for residents of the Ashurst Bar/Smith community. ABSCO was formed to protest the Tallassee Waste Disposal Center, which is today known as the Stone's Throw Landfill, and the adverse impacts associated with it, educate the community, protect the common heritage of the land, and seek an inclusive role in decision-making processes that affect the health, social, and economic status of the historically-Black Ashurst Bar/Smith community. ABSCO has a long history of challenging ADEM's failure to comply with Title VI of the Civil Rights Act of 1964 and to protect the civil rights of members of our community.<sup>1</sup> Represented by the EJC Clinic and LDF, ABSCO has filed two civil rights complaints alleging that the Alabama Department of Environmental Management (ADEM) violated Title VI and EPA regulations in approving permits for the operation of the Stone's Throw Landfill and has a strong interest in receiving information about EPA standards for evaluating allegations of civil rights violations and making such information available to members of the Ashurst Bar/Smith community and others with an interest in EPA's standards for evaluating civil rights complaints.<sup>2</sup>

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<sup>1</sup> Declaration of Phyllis Gosa, Complainant in EPA File No. 6R-03-R4 (March 3, 2017) (on file with the signatories to this letter).

<sup>2</sup> Letter from Unnamed Individual to EPA (September 3, 2003) (on file with the signatories to this letter); Letter from Marianne Engelman-Lado, Director, Environmental Justice Clinic, to Lilian Dorka, Acting Director, External Civil Rights Compliance Office (April 25, 2017) (on file with the signatories to this letter).



## **EXPEDITED PROCESSING**

The EJL Clinic, LDF, and ABSCO seek expedited processing of this FOIA request pursuant to 5 U.S.C. § 552(a)(6)(E). We believe there is “an urgency to inform the public” and the members of the ABSCO of the EPA’s standard for assessing Title VI claims. 40 C.F.R. § 2.104(e)(ii).

In 2017, EPA closed a Title VI complaint filed in 2003 related to the impact of Stone’s Throw Landfill on the Ashurst Bar/Smith Community. Also in 2017, EPA accepted for investigation a new Title VI complaint brought by ABSCO related to that Landfill’s impact on its members and other residents in that predominately-Black community. The EJL Clinic and LDF represent ABSCO in that pending complaint.<sup>3</sup> The EPA has notified ABSCO that a final determination of its complaint would be issued likely in September or October of this year.

EPA has only made a preliminary finding of discrimination in two or three cases over that agency’s more than 25-year existence.<sup>4</sup>

Together then, the release of the requested records would help to provide information to the public, including the EJL Clinic, LDF, and ABSCO about what it takes to prove a Title VI violation, as well as to assure them and other members of the public of the government’s integrity in investigating environmental discrimination claims brought under Title VI. Indeed, thus far, though ABSCO has raised cognizable Title VI claims, it has failed to demonstrate sufficient evidence to meet standards applied by EPA in assessing allegations for more than fifteen years, and it is critical that ABSCO and other communities improve their understanding of the analysis that EPA applies, particularly with regard to the element of causation. With limited resources to marshal the relevant evidence needed to prove discrimination with respect to ABSCO’s complaint and in other contexts, we urgently require information regarding how EPA defines and evaluates the element of causation in the context of Title VI complaints.

## **FEE WAIVER REQUEST**

The EJL Clinic, LDF, and ABSCO meet the requirements for a fee waiver for this FOIA request and request a waiver of fees in connection with this request. In the event that EPA does not waive fees, we ask EPA to notify us of the basis for its decision and to provide an estimate of costs. Please do not move forward with actions that would require expenditures until we have the opportunity to consider an appeal and the estimate of costs. Particularly, “disclosure of the requested information is in the public interest because it is likely to contribute significantly to

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<sup>3</sup> Earthjustice also represents ABSCO in that Title VI complaint.

<sup>4</sup> Talia Buford, *Rare discrimination finding by EPA civil-rights office*, Public Integrity (Jan. 25, 2017), <https://www.publicintegrity.org/2017/01/25/20616/rare-discrimination-finding-epa-civil-rights-office>



public understanding of the operations or activities of the government and is not primarily in the commercial interests of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii); 40 C.F.R. § 2.107(1)(1). EPA considers six factors when determining whether to waive fees for a FOIA request. 40 C.F.R. § 2.107(1)(2)(i). As demonstrated below, each of the six factors weighs in favor of granting a fee waiver.

**Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government.**

The records requested concern EPA’s standards for defining and assessing causation when investigating whether violations of Title VI and EPA’s implementing regulations have occurred. This is part of the federal government’s broad objective and obligation to protect Americans’ civil rights. These records unquestionably “concern identifiable operations or activities of the Federal government.” *Id.* § 2.107(1)(2)(i).

**Factor 2: Disclosure of the Requested Records Is Likely To Contribute to the Public Understanding of Government Operations or Activities.**

The requested information “is likely to contribute” to an understanding of EPA’s Title VI compliance activities because it will supply critically important information that is not currently available to the public. 40 C.F.R. § 2.107(1)(2)(ii). This request seeks documents that will supply the public with information about how EPA assesses and investigates claims that recipients of EPA’s Title VI funds discriminate on the basis of race. While limited guidance on this subject is available to the public, the requested documents will give a more complete picture of what EPA requires to show a violation has occurred, especially in the Title VI context.

This information is likely to benefit the public at large because it will give helpful information to anyone wishing to file a complaint with EPA. We will make this information available to other complainants through its own networks, listserves, and online locations for information about civil rights enforcement such as the repository of civil rights enforcement information at [https://drive.google.com/drive/folders/0B\\_743UjVspgRTAxMGszanBKOXc](https://drive.google.com/drive/folders/0B_743UjVspgRTAxMGszanBKOXc). When filing a complaint, it is beneficial for the complainant to understand how EPA will assess that complaint and what burden the complainant has to show that a violation has occurred.

**Factor 3: Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience Interested in EPA’s Compliance Activities Associated with Title VI of the Civil Rights Act.**

Disclosure will “contribute to the understanding” of a broad audience interested in EPA’s Title VI compliance activities, environmental justice, and civil rights. ABSCO members include approximately 100 families living in the Ashurst Bar/Smith Community who have filed two civil rights complaints and hope to supplement their pending complaint with information relevant to



EPA's investigation. More information about the standards that EPA applies in its analysis of causation will be helpful in guiding this effort.

In addition, we will share the information with a broad array of community-based, regional and national environmental justice, environmental and civil rights organizations who work at the intersection of civil rights and environmental protection. We have a strong interest in Title VI as a tool that may be used to protect vulnerable communities, especially communities of color.

We have the capacity and intention to disseminate the requested information to some or all of the following: (1) any members, supporters, and partnering organizations, (2) policymakers at varying levels of government interested in promoting civil rights compliance, and (3) members of the news media, who will in turn may disseminate the information more broadly to the public. For example, we disseminate information about its activities to a listserv of activists and organizations working to improve civil rights enforcement in the environmental justice context that includes dozens of organizations interested in environmental justice who will further disseminate the information. In addition, we will post materials received in a repository of information about Title VI compliance and enforcement at [https://drive.google.com/drive/folders/0B\\_743UjVspgRTAxMGszanBKOXc](https://drive.google.com/drive/folders/0B_743UjVspgRTAxMGszanBKOXc), and we frequently communicate with other environmental justice organizations that may file complaints with ECRCO at EPA.

Through these varied mechanisms, we intend to convey the requested information to the public to improve public understanding of how EPA handles complaints received under Title VI, and how EPA's Title VI complaint processing and investigation procedure may be improved to better safeguard civil rights.

#### **Factor 4: The Public's Understanding of Government Operations Will Be Significantly Enhanced by Disclosure of the Requested Information.**

Disclosure of the requested records will "contribute significantly to public understanding" of EPA's Title VI compliance activities. 40 C.F.R. § 2.107(l)(2)(iv). The requested documents will provide vital information to parties interested in filing civil rights complaints with EPA and assist potential complainants in understanding the requirements in bringing a valid claim. Several previous civil rights complaints, such as EPA File No. 12R-13-R4, were dismissed due to a lack of causation. There is currently a dearth of information on what is required to establish a causal connection in a Title VI complaint—between, for example, any challenged discriminatory conduct and the beneficiary of Title VI federal funds—that the requested documents will address.

Because many communities of color continue to face ongoing environmental harms and bear disproportionate environmental burdens, many affected communities, stakeholder organizations and individual members of the public continue to have a strong and ongoing interest in the improvement of EPA's Title VI compliance process. Some of these individuals and



organizations currently lack adequate access to information about the status of EPA's Title VI compliance activities. We anticipate that the requested information will further public understanding of how Title VI compliance activities may be improved at the EPA and at other federal agencies and departments in the future.

EPA's External Civil Rights Compliance Office's 2015-2020 Strategic Plan indicates that ECRCO intends to "[i]ncrease proactive engagement with critical external partners and stakeholders, such as recipients and communities" and "[h]eighten transparency and accountability" by making policy guidance and other important documents and resources available to the public online. Providing public access to EPA's documents relating to how it addresses causation in its investigations of complaints will both facilitate engagement of community stakeholders and enhance transparency.

**Factor 5: The Requesters Have No Commercial Interest in the Requested Disclosure of Information.**

The EJI Clinic, LDF, and ABSCO are nonprofit organizations that have no "commercial interest that would be furthered by the requested disclosure." 40 C.F.R. § 2.107(1)(3)(i).

**Factor 6: The Requester's Sole Interest Is To Increase Public Knowledge About EPA Investigations**

By requesting these documents, we seek only to know more about EPA's assessment of Title VI complaints and to increase public knowledge of the same. Since the requester has no commercial interest in the requested records, the request is not "primarily in the commercial interest of the requester." *Id.* § 2.107(1)(3)(ii).

In sum, this request meets all of the six factors for a fee waiver. In the event that EPA does not waive fees, we ask EPA not to move forward with providing the information requested by the FOIA, notify us of the basis for your decision, and provide an estimate of costs.

**INSTRUCTIONS FOR RECORD DELIVERY**

Please send records to Leah Aden at the following address:

Deputy Director of Litigation  
NAACP Legal Defense & Educational Fund, Inc.  
40 Rector Street, 5th Floor  
New York, NY 10006  
[laden@naacpldf.org](mailto:laden@naacpldf.org)  
212 965-7715



Please also contact Leah Aden in the event that you have any questions concerning the type of materials we request, or have concerns regarding the scope of the request.

Thank you for your assistance in this matter.

Sincerely,

Marianne Engelman-Lado  
Environmental Justice Clinic  
Yale Law School  
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After August 15:  
[marianne.engelman-lado@yale.edu](mailto:marianne.engelman-lado@yale.edu)  
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cc. Ronald Smith, Ashurst Bar/Smith Community Organization  
Suzanne Novak, Jonathan Smith, Earthjustice